

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Extension of Deep Seabed Exploration Licenses: Response to Comments

AGENCY: Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Response to Comments.

SUMMARY: Due to a clerical error, comments submitted by the Center for Biological Diversity on a requested extension of Deep Seabed Hard Mineral Resources Act exploration licenses were not considered until after the licenses were extended. After reviewing and considering those comments, NOAA has found that they provide no basis for reconsidering the requested license extensions or revising the now-extended licenses.

FOR FURTHER INFORMATION CONTACT: Contact Kerry Kehoe, Office for Coastal Management, National Ocean Service, 301-563-1151, kerry.kehoe@noaa.gov.

SUPPLEMENTARY INFORMATION: On February 28, 2012, the National Oceanic and Atmospheric Administration published a notice in the Federal Register advising the public of a request from Lockheed Martin Corporation (Lockheed Martin) to extend its two deep seabed mining exploration licenses (USA-1 and USA-4) issued under the Deep Seabed Hard Mineral Resources Act (DSHMRA). *See* 77 FR 12245. Comments on the proposed extensions were requested at that time. Following the February 28, 2012, Notice, NOAA published a second notice in the Federal Register announcing the extension of Licenses USA-1 and USA-4 through 2017, and discussing several comments received on the extensions. *See* 77 FR 40586 (July 10, 2012).

Comments submitted by the Center for Biological Diversity (CBD), however, were not discussed in the July 10, 2012, notice. The CBD comments were received by NOAA but, due to a clerical error, the comments were not routed to the license extension reviewers who were unaware of CBD's comments until after an inquiry was received from CBD following the July 10, 2012, publication of the extension notice. Upon review and consideration of CBD's comments, NOAA determined that the extension of the exploration licenses should stand without modification as CBD's comments were based on a misunderstanding of the nature and scope of the license extensions.

Following the discovery of CBD's comments, the relevant Staff from NOAA discussed the substance of the comments with CBD and described why CBD's concerns as articulated in the comments were not relevant to the USA-1 and USA-4 license extensions. In addition, NOAA is now publishing a response to the CBD comments to address any public misconceptions about the extension of the deep seabed mining exploration Licenses USA-1 and USA-4.

General Response to the CBD Comments

The CBD comments pertain to activities not presently authorized pursuant to the license extensions. Instead, the CBD comments are relevant to at-sea exploration activities that, if pursued, would first require additional NOAA approvals. *See* 77 FR 12246. As discussed below, the extension of the Lockheed Martin exploration licenses merely serves to preserve the legal status and any domestic and international priority of rights that Licenses USA-1 and USA-4 may confer.

As part of Lockheed Martin's request to extend the USA-1 and USA-4 exploration licenses, it submitted a two-phase exploration plan. This two-phased plan is consistent with all the previous exploration plans submitted since the issuance of these licenses. Phase I is a preparatory stage which includes activities for which no license would be required. Phase II includes activities for which an exploration license may be required. The current exploration plan includes statements anticipating that actual exploration activities might be conducted under Phase II during the requested five-year extension; however, those statements are qualified. Lockheed Martin has stated that before it will conduct at-sea activities requiring an exploration license (i.e., Phase II activities), international security of tenure must first be obtained.¹ In order for this to occur, the United States must first accede to the Law of the Sea Convention. The United States Department of State, in commenting on the requested license extension, stated its view that for Lockheed Martin to proceed with exploration activities without international recognition would be a violation of the terms, conditions and restrictions of its license. In the July 10, 2012, Federal Register notice for the issuance of the extension for the explorations licenses, NOAA acknowledged and accepted the Department of State's position. *See* 77 FR 12246.

Lockheed Martin also provided NOAA written confirmation that no at-sea exploration activities, which would require a license, would be conducted without additional authorization from NOAA. Such authorization would, at that time, be subject to all necessary environmental reviews. Although Lockheed Martin may ultimately conduct at-sea exploration activities pursuant to the USA-1 and USA-4 licenses, such activities would require additional

¹ Lockheed Martin has also stated that the market price of metals would need to increase and stabilize to make the deep sea recovery of such materials commercial viable.

environmental review and NOAA authorization before commencement of such exploration pursuant to these licenses.

Accordingly, upon review and consideration of the CBD comments, NOAA has found that the extension of the deep seabed mining exploration licenses should stand without modification.

NOAA's specific responses to the CBD comments are provided below.

Response to CBD Comments

Comment 1: *NOAA cannot extend the licenses or approve the exploration plan unless it fully complies with the environmental review provisions of the National Environmental Policy Act (NEPA) through the preparation of an environmental assessment or environmental impact statement which includes a full analysis of the impact of direct, indirect and cumulative effects; alternatives; and mitigation measures for the action, along with an opportunity for public review and comment. It is inadequate for NOAA to rely on any prior NEPA analysis as there is significant new information about the impacts of offshore mineral exploration. While tiering to a previous environmental assessment (EA) or environmental impact statement (EIS) may be useful in complying with NEPA, it does not eliminate the need to analyze the impacts of site specific actions.*

Response: NOAA disagrees that the Agency has failed to fully comply with the requirements of NEPA.

NOAA has prepared a programmatic EIS in connection with potential deep ocean mining activities.² In addition, an EIS was prepared for USA-1 and USA-4³ at the time of issuance and an updated environmental assessment was prepared in 1989 for the licenses.⁴ When USA-4 was transferred to Lockheed Martin Company in 1994, an additional environmental impact statement was prepared that noted that the EIS was only being prepared to meet the requirements of DSHMRA to prepare an EIS, and not those of NEPA as the transfer of the license would not have significant environmental impacts.⁵

With respect to the instant license extensions, NOAA considered its environmental compliance obligations and determined that, in order for the Agency to conduct an environmental review, there must first be a proposed activity to review. As discussed above, there is no action triggered or authorized pursuant to the USA-1 and USA-4 license extensions that has the potential to significantly affect the environment. The extensions merely preserve any domestic or international priority of rights the licenses may confer. Lockheed Martin's revised exploration plan associated with the license extensions, which like each other exploration plan submitted for these licenses, has two phases with the first being preparatory land-side activities that do not require any authorizations and the second including actual at-sea exploration activities.

Lockheed Martin has noted that its Phase II activities are contingent upon a U.S. accession to the

² The programmatic EIS was prepared in 1981 which described the results of the Deep Ocean Mining Environmental Study (DOMES), a five-year project designed to examine potential effects of nodule mining. The review covered both exploration and commercial recovery authorizations; however, it only assessed the environmental impacts from first generation mining activities with the belief that there would be a need for further assessments as the industry developed and evolved. The PEIS found that data collection activities for assessing resources and determining seafloor characteristics presented no threat of significant adverse effects on the environment. U.S. Dept. of Commerce, NOAA, Deep Seabed Mining: Final Programmatic Environmental Impact Statement, Sept. 1981.

³ U.S. Dept. of Commerce, NOAA, Deep Seabed Mining: Final Environmental Impact Statement, July 1984.

⁴ U.S. Department of Commerce, NOAA, Deep Seabed Mining: An Updated Environmental Assessment of NOAA Deep Seabed Mining Licensees' Exploration Plans, Jan. 1989.

⁵ U.S. Dept. of Commerce, NOAA, Deep Seabed Mining: Final Environmental Impact Statement, November 1994.

Law of the Sea Convention and a substantial increase in the market prices for metals; two events which have not occurred and are not likely to occur prior to the end of the current term of the licenses. Should Lockheed Martin decide to conduct any Phase II, at-sea exploration in connection with USA-1 or USA-4, the terms of the licenses require additional authorizations from NOAA and other federal reviewing agencies prior to the commencement of any such activities.

Given the phased nature of these licenses and the uncertainty associated with possible commencement of Phase II activities, NOAA believes it would be premature at this stage to conduct the types of environmental reviews suggested by commenter. Lockheed Martin has not detailed the specific location(s) within the licensed exploration areas where any future at-sea activities would be conducted. The company has also not detailed the specifics of any exploration techniques, equipment or intensity. Absent this type of information, any environmental review conducted by NOAA would be speculative at best. Instead, NOAA believes that environmental reviews, including those that may be required under NEPA, are appropriate once Lockheed Martin has decided to pursue NOAA authorization for Phase II activities. Such environmental review will be subject to public review and comment, and NOAA encourages CBD to participate in that process should Lockheed Martin seek approval for Phase II activities.

Comment 2: *The extension is an action that must comply with the Endangered Species Act, Marine Mammal Protection Act and Migratory Bird Treaty Act.*

Response: NOAA disagrees. As described in the response to comment 1 above, no action is presently triggered or authorized pursuant to the USA-1 and USA-4 license extensions that has the potential to affect protected species under the cited statutes. As such, NOAA is unaware of, and commenter has not identified, any outstanding obligations with respect to these statutes.

Comment 3. *The initial phase of the application at issue here will be comprised of surveys and other activities in preparation for mining. These exploratory surveys have significant environmental impacts including acoustic impacts from the use of seismic survey airguns, mining and lighting impacts. Deepsea [sic] mining also generates waste, noise, fuel or other spills, vessel traffic, sediment plumes, habitat disturbance and destruction, and water quality problems. The license should be denied because it is untenable for NOAA to make a finding that the exploration proposed in the application cannot reasonably be expected to result in significant adverse effect [sic] on the quality of the environment as required for issuing a license under 15 CFR 970.506. Any license should be conditioned on measures that avoid these environmental impacts.*

Response: NOAA disagrees. Contrary to the assertion of the commenter, the current license extensions do not authorize the at-sea activities described in the comments. The requested license extensions only extend the term of the licenses and do not authorize the types of at-sea exploration activities cited by commenter. Indeed, conducting such activities may be unnecessary as Lockheed Martin stands in a unique position as a pre-enactment explorer (i.e., the company conducted its exploration activities including the acquisition of manganese nodules from the seafloor for assay purposes prior to the enactment of the DSHMRA). When USA-4 was

transferred to Lockheed Martin in 1994 following the relinquishment of the license from the consortium led by Kennecott Corporation, Lockheed Martin's request for the transfer of the license stated that the company had no plans to conduct at-sea exploration activities since it already had conducted sufficient exploration prior to the enactment of DSHMRA. As noted above, when and if Lockheed Martin decides to seek authorization to commence Phase II activities, such authorization will trigger appropriate review of the environmental impacts associated with the proposed at-sea exploration activities.

The CBD comments also contain an extensive discussion of the impacts of airguns used to conduct seismic surveys. No such activities have been proposed, let alone authorized.

Additionally, throughout the CBD comments the impacts of mining of the deep seabed are also discussed. Mining has not been authorized nor proposed. DSHMRA establishes a licensing requirement for exploration activities and a separate permit requirement for commercial recovery (i.e., mining). Both exploration licenses expressly prohibit the licensee from even testing mining equipment without receiving further authorization from NOAA. To date, no such authorizations have ever been requested.

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